**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

ERIC PRUDHOMME, *et al.*, Individually and on behalf of others similarly situated	**CASE NO: 6:15-cv-00098**
	JUDGE ROBERT G. JAMES
vs.	**MAGISTRATE JUDGE CAROL B. WHITEHURST**
GEICO CASUALTY INSURANCE CO., *et al.*	

**MEMORANDUM IN OPPOSITION
TO GEICO'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE:
ELVIN JACK CLAIMS OR, IN THE ALTERNATIVE, MOTION TO COMPEL
APPRAISAL**

MAY IT PLEASE THE COURT:

Insurance is a special type of contract. The consumer pays premiums to the insurance company. In return, the insurance company pays benefits to the consumer if one of the things that the consumer is paying premiums to protect against – in this case, vehicle property damage – occurs. But because of the special nature of the relationship between the insurance company and the insured, an insurance company may not engage in the same type of free-wheeling profit motivation (oftentimes to the detriment to the party on the other side of the transaction) that other for-profit companies might employ. Instead an insurance company owes a special duty to its insured. In Louisiana, that duty of "good faith and fair dealing" has long been enshrined in the law and insureds are provided specific protections regarding an insurance company's duties when adjusting and paying for property loss. This case is about an insurance company's violations of those specific protections.

Specifically, this case is about Government Employees Insurance Company, GEICO Casualty Insurance Company, and GEICO General Insurance Company's[1] use of a claims system called CCC Valuescope Value Report to determine the total loss value of its insured's vehicles. It is a system that intentionally undervalues the vehicle's worth and thereby cheats its insureds out of the full amount owed under the terms and conditions of their policies.

Use of this system violates Louisiana statutory law in that it is not a "generally recognized used motor vehicle industry source" as required by La. R.S. 22:1892 B(5)(b), such as NADA or Kelley's Blue Book. CCC Valuescope is not relied upon by anyone in the used motor vehicle industry. It is simply a claims handling tool used by GEICO for the purpose of paying less than it owes on its insureds' claims in order to maximize profits.

Before the Court is Defendants, Government Employees Insurance Company and GEICO Casualty Insurance Co.'s (hereinafter "GEICO") motion to dismiss Elvin Jack's claims via partial summary judgment. Alternatively, GEICO asks this Court to compel appraisal of Mr. Jack's vehicle under purported applicable policy provisions.

As discussed below, the relief sought by Defendants is not warranted and the motions should be denied.

I. GEICO's Motion to Compel Appraisal Should be Denied

A. Defendants' Demand for Appraisal is Untimely and Impossible

On March 4, 2014, Elvin Jack was involved in an automobile accident that rendered his 2000 Ford Ranger V-6 Supercab Truck a total loss. GEICO General Insurance Company, through use of its CCC Valuescope Value Report system, estimated the value of the loss to be lower than what Mr. Jack believed it to be. By GEICO's own admission, Mr. Jack complained about the low total loss evaluation as early as March 7, 2014. GEICO's claim log indicates that the March 7, 2014 discussion focused on the discrepancy between the GEICO estimate and a "much higher" one that Mr. Jack received from another adjuster.[2] Mr. Jack discussed his dissatisfaction with GEICO again on March 10, 2014 and March 11, 2014.[3] Since that time, Mr. Jack has sold the vehicle[4] and filed suit against GEICO.

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[1] Plaintiffs seek to add GEICO General Insurance Company as Defendant by way of its Second Supplemental and Amending Petition for Damages, attached hereto as Exhibit "A."

GEICO now seeks to have this Court compel appraisal for the loss that occurred in March of 2014 and cites to its insurance policy which, according to its terms, allows GEICO or its insured to demand an appraisal if loss is not agreed upon within 60 days after proof of loss is filed.

While it is true that appraisal provisions in insurance policies are enforceable, it is also axiomatic that those provisions are strictly construed. *Branch v. Springfield Fire & Marine Ins. Co.,* 198 La. 720, 4 So.2d 806, 809 (1941); *St. Charles Par. Hosp. Serv. Dist. No. 1 v. United Fire & Cas. Co.*, 681 F. Supp. 2d 748, 754 (E.D. La. 2010).

In *Triple K, Inc. v. Century Sur. Co.,* 2010 WL 3418237, (E.D.La. Aug.23, 2010), Louisiana's Eastern District Court held that "as long as the insurer [has] sufficient information to act on the claim, it [is] the insurer's responsibility to respond either by compensating [plaintiff] under the policy or disputing the claim via the appraisal process."

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[2] See GEICO's claim log filed attached as Exhibit 4 to GEICO's motion and attached hereto as Exhibit "B."
[3] See GEICO's claim log filed attached as Exhibit 4 to GEICO's motion and attached hereto as Exhibit "B."
[4] See May 6, 2015 email correspondence from J.R. Whaley to Ian Fischer, attached hereto as Exhibit "C."

Here, GEICO's efforts to seek appraisal should have been demanded within 60 days of March 7, 2014—the date it became aware that there was a dispute as to GEICO's payment for Mr. Jack's total loss. GEICO's failure to seek appraisal within that limited timeline precludes it from seeking appraisal now. Further, as detailed in Exhibit "C", Mr. Jack no longer owns the vehicle. An inspection is simply impossible at this late juncture.

B. Appraisal Does Not Address the Claims in this Suit

Even if Appraisal was timely demanded within the parameters of GEICO's policy, this Court should deny the Defendants' motion because appraisal is irrelevant in light of the claims asserted in this case. Again, the heart of Plaintiffs' claims is that GEICO's use of the CCC Valuescope system violates La. R.S. 22:1892(B)(5) because the system does not yield a "retail cost as determined from a generally recognized used motor vehicle industry source."[5]

With respect to Elvin Jack's claim, for example, NADA described the value of his vehicle at $4,475.00 but GEICO's use of the CCC Valuescope system allowed GEICO to reach a recommended settlement amount of $2,801.00.

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[5] La. R.S. 22:1892(B)(5)(b) reads in pertinent part as follows:
"(5) When an insurance policy provides for the adjustment and settlement of first-party motor vehicle total losses on the bases of actual cash value or replacement with another of like kind and quality, and the insurer elects a cash settlement based on the actual cost to purchase a comparable motor vehicle, such cost shall be delivered by using one of the following:
...
(b)Retail cost as determined from a generally recognized used motor vehicle industry source; such as, electronic data base, if the valuation documents generated by the data base are provided to the first-party claimant, or a guide book that is available to the general public. If the insured demonstrates, by presenting two independent appraisals, based on measurable and discernable factors, including the vehicle's preloss condition, that the vehicle would have a higher cash value in the local market area than the value reflected in the source's database or the guidebook, the local market value shall be used in determining the actual cash value.
...

CCC Valuescope is simply a claims handling tool used by GEICO for the purpose of paying less than it owes on its insureds' claims in order to maximize profits. Plaintiffs contend GEICO's use of the CCC Valuescope system results in the systematic underpayment of first party motor vehicle total loss claims in violation of Louisiana law. Particularly, Plaintiffs allege that CCC Valuescope is not a "generally recognized used motor vehicle industry source" as required by La. R.S. 22:1892. Those statutory violations are the crux of Plaintiffs' claims.

Appraisal simply does not address Plaintiffs' claims that GEICO's use of the CCC Valuescope system violates Louisiana law. Irrespective of any adjuster's appraisal, GEICO's use of the CCC Valuescope system unlawfully fixes the base retail value which results in total loss valuations that are significantly less than the values determined under recognized used motor vehicle industry resources, such as NADA and Blue Book.

For these reasons, GEICO's efforts to seek appraisal should be denied.

II. GEICO's Motion for Partial Summary Judgment re: Elvin Jack

GEICO moves for partial summary judgment dismissing Elvin Jack's claims against them because neither of the named GEICO entities issued Elvin Jack's insurance policy. Defendants' argument makes clear that GEICO General Insurance Company—not the previously identified GEICO Casualty Company or Government Employees Insurance Company—issued the policy and is the appropriate target in his lawsuit.

Dismissal of Elvin Jack's claims based on the misidentification of the appropriate GEICO affiliate, however, is a drastic and unnecessary remedy when the misidentification can be corrected by amending the petition.

Plaintiffs have corrected the misidentification through a Second Supplemental and Amending Petition for Damages naming GEICO General Insurance Company as the Defendant who issued Jack's policy. In that pleading filed contemporaneous with this brief, Plaintiffs have illustrated why the new pleading should relate back to the previously filed one under Federal Rule of Civil Procedure 15(c)(1)(A) (because of the applicable Louisiana law governing prescription) and 15(c)1(C) (because GEICO General Insurance Company had knowledge of the pending action from the outset and is, in fact, already defending it through counsel for the other GEICO defendants).

If the Court agrees and determines the Second Supplemental and Amending Petition for Damages relates back, then Elvin Jack's claims survive the Defendants' Motion for Summary Judgment.

III. Conclusion

GEICO's requested relief is not supported by the law and facts present before the Court. Accordingly, GEICO's motions be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2017, I electronically filed the foregoing with the Clerk of the Court for the Western District of Louisiana by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

J. R. WHALEY